

FILED  
REVIEW OF REGULATIONS  
MAR 27 06 02 14 35

Title 265 - WATER MANAGEMENT BOARD

Chapter 2 - ADMINISTRATION OF THE WATER MANAGEMENT FUND

001 Assistance Available from the Water Management Fund. The Board may approve grants and/or loans from the Fund to assist in paying the eligible local costs of planning assistance, and construction of projects which meet the criteria of the Act and these regulations. Planning assistance may be provided to assist sponsors in funding the preparation of studies, reports, or other documentation necessary to determine whether an eligible project is technically, economically, and financially feasible, environmentally acceptable and otherwise consistent with the criteria for eligibility for construction assistance contained in the act and these rules and regulations. Planning assistance may also be provided to assist in the preparation of the necessary studies, reports or other documentation necessary to determine whether a project is eligible for federal construction assistance. Construction assistance may be provided to assist sponsors in funding the final planning and design, and construction of projects found by the Board to be consistent with the criteria for eligibility contained in the Act and these rules and regulations. Grants may be approved for up to seventy-five percent and loans for up to ninety percent of the eligible local costs of project planning assistance and/or construction. When any loan is approved by the Board, it shall require adequate security for payment of the loan prior to the disbursement of any loan funds.

001.01 Determining whether Grant or Loan is appropriate. When determining whether a grant, loan, or combination of grant and loan is appropriate, and the appropriate level of funding, considerations of the Board shall include, but not be limited to:

001.01A The water related needs and problems of the state and the area to be served by the project and the extent to which the proposed project addresses those needs and problems felt by the Board to have the highest priority for state assistance.

001.01B The degree to which the project benefits private individuals and may therefore be appropriate for a loan versus the degree to which the project benefits the general public and may therefore be appropriate for a grant.

FILED  
Allen J. Beermann  
Secretary of State

MAR 26 1986

APPROVED:

Date 3-26-86

*Bob Keeney*  
Governor

APPROVED  
ROBERT M. SPIRE  
ATTORNEY GENERAL

MAR 12 1986

BY *L. W. Snowers*  
Assistant Attorney General

Title 265  
Chapter 2

001.01C The degree to which eligible costs can and should be paid by the sponsor through local tax revenues, the imposition of user fees or special assessments, the sale of vendible outputs, other revenue generated by the project, or other funds available to the sponsor.

001.02 Interest Rate on Loans. The rate of interest payable on loans not involving the sale of water project revenue bonds pursuant to sections 2-4501 to 2-4528, R.S. Supp. 1984, and amendments thereto, shall be determined prior to July 1 of each fiscal year. The rate of interest shall be the average yield, as determined by the "Moody's" rating and classification system, of Aaa State-Local Bonds issued nationally for the previous year rounded off to the nearest one-eighth percent. The rate of interest payable on a loan for a specific project shall be the rate in effect for the fiscal year in which the Board approves the loan. That rate shall remain in effect throughout the repayment period determined to be appropriate for the project.

001.03 Deferred Interest and Repayment Period. When in the Board's judgment a construction or preconstruction period (not exceeding five years) following the initial obligation of funds is justified, no payment on the interest or principal on the loan shall be required during that period, but interest shall begin accruing on all loan allocations immediately with disbursement. Repayment shall commence no later than one full year following completion of project construction. Any deferred interest may be apportioned over the repayment period. The repayment period will not exceed the project life or forty years, whichever is less.

002 Applications for planning assistance. Unless otherwise directed by the Chairperson, twenty copies of an application for planning assistance shall be submitted to the Chairperson. No application fee will be charged. Applications may be approved by the Board if the proposed project is consistent with section 2-15,116(3) R.S. Supp. 1985 and amendments thereto and these rules and regulations.

002.01 Information Required. The Sponsor shall provide the following information in an application for assistance for project planning. In

Title 265

Chapter 2

the event a study which addresses items listed below, such as an appraisal level or pre-feasibility study, has been prepared for the proposed project, such study may be submitted to the Board for review. However, any information required by these rules and regulations or requested by the Board or Chairperson which is not contained in such study shall also be submitted.

002.01A The name and address of the sponsor or sponsors.

002.01B The sponsor's authorized representative and his or her address and telephone number.

002.01C A description of the purpose(s) of the proposed project, a preliminary plan of the primary structures and other features of the proposed project, and a description and map of the area to be affected or served by the project and the area affecting the project.

002.01D A description of the type of assistance sought from the Board and if financial assistance is desired, the amounts requested in the form of a grant and the form of a loan. If a loan is requested, a proposed repayment schedule shall also be provided.

002.01E A preliminary analysis of the economic feasibility of the proposed project which shall include an estimate of the costs of construction of the project and the primary benefits that would result.

002.01F A discussion of any intangible benefits of the proposed project.

002.01G A preliminary analysis of the technical feasibility of the proposed project.

002.01H A preliminary analysis of the financial feasibility of the proposed project which shall include a description of the funding to be sought from all sources, including but not limited to, federal and state funds, local property tax levy, user fees, special assessments and the sale of project output.

Title 265  
Chapter 2

002.01I A preliminary analysis of the environmental acceptability of the proposed project including an assessment of whether the proposed project could jeopardize the continued existence of, or destroy or modify the critical habitat of any threatened or endangered species.

002.01J A preliminary analysis of the consistency of the proposed project with each of the applicable state goals for water resources use.

002.01K A discussion of why the proposed project is in the state's interest and why the expenditure of funds for additional project planning is a reasonable use of state and/or federal funds.

002.01L A statement of urgency of need for the proposed project which shall include an analysis of the effectiveness of the proposed project in meeting the stated purposes for the project.

002.01M A discussion of all reasonable alternatives for accomplishing the purposes of the proposed project and a preliminary estimate of the costs of each alternative. The alternative of taking no action shall also be discussed.

002.01N The estimated schedule for completion of planning for the project and for construction of the project if funds are made available. In addition, the sponsor should identify any permits which must be obtained for the project or other legal requirements that must be met prior to construction and provide an estimated schedule for obtaining the necessary permits and meeting any applicable requirements.

002.01O The transcript of at least one public hearing conducted by the sponsor not more than two years prior to submission of the application to obtain public input on the proposed project. If more than one public hearing has been held by the sponsor, the transcript of any additional hearings shall also be included.

002.01P Any other information requested by the Board and any other information the sponsor feels should be considered by the Board.

Title 265  
Chapter 2

003 Review of and Action on Application for Planning Assistance. An application shall be reviewed by the Board with the assistance of the staff of the Natural Resources Commission, and any other appropriate state or federal agency personnel, to determine whether the application is consistent with section 2-15,116(3) R.S. Supp. 1985 and amendments thereto, and these rules and regulations. A sponsor shall provide any additional information the Chairperson or the Board determines is necessary to properly evaluate an application. All applications shall be reviewed in a non-judicial setting as required by section 2-15,116 R.S. Supp. 1985. Upon completion of its review, the Board shall determine whether the proposed project complies with section 2-15,116(3) and these rules and regulations. The Board's action shall address the eligibility of the proposed project for assistance pursuant to the Act and these rules and regulations and, if appropriate, establish a tentative allocation of funds for planning assistance for the project, state whether the allocation is to be in the form of a grant, loan, or combination grant and loan, and the dollar amount and percentage of eligible costs covered thereby. If a loan is involved, the interest rate and repayment period shall also be established. Any Board action approving a request for assistance shall also include a statement that the Board has determined the approval of planning assistance for the proposed project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of any habitat designated as critical for a threatened or endangered species. The Board shall also identify any items needing special emphasis in the preparation of a feasibility study. The sponsor and other interested parties shall be informed in writing of the Board's decision.

004 Submission of Application for Financial Assistance for Project Construction. Unless otherwise directed by the Chairperson, twenty copies of an application for assistance for project construction shall be submitted to the Chairperson. No application fee shall be charged. An application may be approved by the Board if the proposed project is consistent with section 2-15,110 to 2-15,112 and section 2-15,116 R.S. Supp. 1984, and amendments thereto, and these rules and regulations.

004.01 Contents of Applications for Assistance for Project Construction. Applications for financial assistance for the construction of projects shall contain the following information:

Title 265  
Chapter 2

004.01A The name and address of the sponsor(s).

004.01B The sponsor's authorized representative and his or her address and telephone number.

004.01C A description of the purpose(s) of the proposed project and its principal features.

004.01D A description of the type of assistance sought from the Board and if financial assistance is desired, the amounts requested in the form of a grant and the form of a loan.

004.01E A statement indicating the total estimated cost of construction, an estimated schedule for construction of the project and annual funding needs.

004.01F A discussion of the history and background of the project and urgency of need for the project.

004.01G The transcript of at least one public hearing conducted by the sponsor not more than two years prior to submission of the application to obtain public input on the proposed project. If more than one hearing has been held by the sponsor, the transcript of any additional hearing(s) shall also be included.

005. Submission of Feasibility Report. Unless otherwise directed by the Chairperson, all applications for assistance for project construction shall be accompanied by twenty copies of a feasibility report for the proposed project, the contents of which shall be of sufficient detail to demonstrate the technical, economic and financial feasibility and environmental acceptability of the project, the consistency of the proposed project with the state goals for water resources use applicable to the proposed project, that the proposed project is in the state's interest and identify the alternatives considered by the sponsor. The detail of the feasibility report will vary depending on the type, purpose, and complexity of the project. When assistance from the Board is requested for participation in a project planned by an agency of the federal government, the federally prepared feasibility study can be submitted by the sponsor for the purpose.

Title 265  
Chapter 2

of complying with the Act and these rules and regulations. However, any information required by these rules and regulations which is not contained in the federally prepared feasibility study shall also be submitted. The Chairperson reserves the right to reject all or a portion of any such feasibility study on the grounds that the information provided therein is insufficient or inadequate for full evaluation of the proposed project's eligibility for assistance from the Board or is not consistent with the criteria for eligibility contained in the Act or these rules and regulations. The feasibility report shall address the following subjects:

005.01 Technical Feasibility. A project shall be considered technically feasible if it has been shown the project can be designed so it can be constructed and operated, in accordance with applicable safety standards, to accomplish the purpose(s) for which it was planned and for which economic benefits are claimed, utilizing accepted engineering and other technical principles and concepts. The technical feasibility section should include, but is not limited to, the following:

005.01A. A description of the physical setting of the proposed project, including but not limited to:

005.01A1 Soils of the area.

005.01A2 Topography.

005.01A3 Pertinent climatic data.

005.01A4 Surface and groundwater resources.

005.01A5 Geology.

005.01B. A detailed description of the plan of development selected for the project.

005.01C. Maps, drawings, charts, tables, and other information that will support the text of the report.

005.01D. A description of all field investigations made to support design and report preparation.

005.01E A description of the water and land rights, or rights-of-way, associated with the project and pertinent water supply information, if appropriate.

005.01F A detailed description of each factor considered in the planning of the project, including but not limited to:

005.01F1 Hydrologic and hydraulic factors.

005.01F2 Structural factors.

005.01F3 Geologic factors.

005.01F4 Soil and foundation factors.

005.01F5 Structural materials.

005.01G A discussion of the applicable safety standards of federal, state, and local governments, including but not limited to, the Corps of Engineers, Occupational Safety and Health Administration, Nebraska Department of Water Resources, Nebraska Department of Health, and others, if appropriate.

005.01H A discussion of the relevant factors contributing to major design decisions, including the assumptions, criteria, and methods used in hydrologic, hydraulic, structural, and geologic aspects of design.

005.02 Economic Feasibility. A project shall be considered to be economically feasible if the internal rate of return is equal to or exceeds the rate determined in accordance with section 2-005.02D and each project's purpose in a multi-purpose project provides primary benefits equal to or greater than its separable or specific cost. The Board may also require that separable project features or increments have benefits which equal or exceed their costs. The project should be the most economically efficient means of accomplishing the general purpose or purposes of the project which is socially, technically, and environmentally acceptable. All cost and benefit data reported by the sponsor will be based upon current data and sources for all data must be documented. Certain commodity prices, recreation benefit values, and wildlife values will be prescribed by the Chairperson. The Chairperson may also prescribe other cost and benefit information

Title 265  
Chapter 2

necessary for completion of the feasibility report. The period of analysis for economic feasibility studies shall be the design life of the project not to exceed one hundred (100) years. The design life of a project shall commence the first year benefits can be claimed for the project.

005.02A Cost Information. The report shall include all relevant cost information including, but not limited to, all actual or anticipated costs for the feasibility study, the engineering and inspection costs, land rights, capital construction costs and any associated costs, annual operation and maintenance costs, and annual replacement costs. Cost information shall also indicate the estimated construction period, construction schedule and annual expenditures as well as the estimated project life.

005.02B Benefit Information. Only primary tangible benefits may be counted in providing the monetary benefit information. In a multi-purpose project, the benefits will be estimated for each purpose and displayed by year for the project life. Intangible benefits and secondary economic impacts of the proposed project or program may be described for consideration and evaluation by the Board. Benefit measurement techniques and criteria shall be provided to the applicant by the Chairperson.

005.02C Cash Flow Stream. All benefit and cost data will also be presented in a table form to indicate the annual cash flow for the design life of the project, not to exceed 100 years.

005.02D Rate of Return on Investment. The cost and benefit data expressed in the cash flow stream will be utilized by the Natural Resources Commission staff to calculate the rate of return on the investment. The rate of return on the investment is the discount rate applied to future benefits and costs at which costs and benefits become equal and the net present worth of the project cash flow is zero. The minimum rate of return for a project to be considered economically feasible shall be the previous ten year average of the inflation adjusted annual yield of "Moody Series" Aaa State and Local Bonds.

005.02E Other Methods. In the case of proposed projects for which there is no generally accepted method for calculation of primary, tangible benefits, the economic feasibility of the project shall be demonstrated by such method as the Chairperson finds acceptable.

005.03 Financial Feasibility. A project shall be considered to be financially feasible if sufficient funds can be obtained to finance the costs of construction, to operate, maintain, and replace the project and to repay any reimburseable costs of the project. Financial information supplied by the sponsor shall consist of:

005.03A A detailed description of the sponsor's plan for payment of the costs of the project, including operation and maintenance costs, and for repaying any reimburseable costs of the project. All proposed funding sources shall be described, including but not limited to federal funds, state funds, local tax funds, user fees, special assessments, revenue from the sale of project output, and the issuance of bonds. Supporting information shall include:

005.03A1 A year-by-year analysis of the expenses of the project including operation and maintenance expenses, repayment requirements and interest expenses and the funds projected to be available to the sponsor to pay the costs of the project from all sources.

005.03A2 The legal limit of the rate of taxation by the sponsor and the rate currently being levied.

005.03A3 The actual valuation for the current year and the previous five years.

005.03A4 The rate of local delinquency.

005.03A5 The legal limit of revenue and general obligation bond indebtedness.

005.03A6 A description of any debts, including bonded indebtedness and those resulting from contractual or other

Title 265  
Chapter 2

obligations including obligations or commitments for other projects and programs.

005.03A7 A copy of any study conducted to estimate revenues to be derived from the project.

005.04 Environmental Acceptability. A project shall be considered to be environmentally acceptable when the Board, in consultation with the Game and Parks Commission, has found that the project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of the critical habitat of any such species; the plan of development minimizes, in a manner satisfactory to the Board, any adverse impacts on the natural environment and/or on any cultural resources in the project area; the plan of development includes appropriate mitigation features to compensate for any adverse impacts to the natural environment and/or any cultural resources in the project area; and any remaining uncompensated adverse impacts are outweighed by the benefits to be realized from the project. In addition to any proposed mitigation measures, if applicable, all aspects of the proposed project which can be anticipated to result in environmental enhancement shall be considered in determining whether the plan of development is environmentally acceptable. To assist the Board in determining the environmental acceptability of the project, the sponsor will provide a detailed environmental assessment for the proposed project. The assessment should be of sufficient detail to demonstrate the probable environmental consequences of the project by providing the following information:

005.04A A description of the environment that will be affected by the project including, but not limited to:

005.04A1: A description and map of the principal facilities associated with the project and the area affected by the project.

005.04A2: A description of the topography, and land uses of the area affected.

005.04A3 A description of the major plant communities, and fish and wildlife in the area, to be accompanied by a habitat evaluation for the area affected.

005.04A4 A discussion of ground and surface water quality and quantity in the area affected and any associated problems.

005.04A5 A description of the archeological, scenic, and historical resources of the area, to be obtained through a cultural resources survey which is to accompany the feasibility report.

005.04B A discussion of the probable positive and negative environmental impacts of the proposed project, including, but not limited to:

005.04B1 The impact of land acquisition and inundation on land ownership patterns, future land use and development trends, prime farmland, and the relocation of farmsteads, residences, or other structures.

005.04B2 The impact of inundation or construction on the cultural resources of the area.

005.04B3 The impact of the project on the quality of life in the surrounding area including scenic beauty, noise, traffic, litter, dust and other factors.

005.04B4 The impact of construction and operation of the project on soil erosion, ground and surface water quality and air quality, including a discussion of how the project will address any ground water quality problems identified in the ground water management plan(s) prepared by the natural resources district(s) within which the project lands are located.

005.04B5 The impact of the project and any practices associated with it on ground water levels, including the

Title 265

Chapter 2

likelihood of seepage damages occurring, on surface water runoff and drainage, on streamflows, and on the interrelationship of ground and surface water.

005.04B6 The impact of the project on forest and woodland resources, including native or naturally occurring woodlands and aforestation areas including windbreaks and shelterbelts, wildlife habitat and erosion control plantings.

005.04B7 The impact of the project on plant life, fish, and wildlife and associated habitat. The impact of the project on endangered or threatened species shall be specifically addressed. If the sponsor is subject to the Nebraska Non-Game and Endangered Species Conservation Act, the feasibility report shall include a statement that the sponsor has consulted with the Game and Parks Commission regarding the impact of the project on endangered and threatened species and associated critical habitat, and the sponsor has determined the project will not jeopardize the continued existence of any endangered or threatened species or destroy or modify the critical habitat of any such species. The feasibility report shall be accompanied by a copy of the biological assessment and/or biological opinion issued by the Game and Parks Commission for the project and any report on the subject prepared by or for the sponsor.

005.04C A discussion of how the plan for development minimizes any adverse impacts on the natural environment and/or any cultural resources in the project area.

005.04D A discussion of mitigation or enhancement measures proposed to reduce or compensate for adverse environmental impacts, including but not limited to, acquisition of similar habitat areas, wildlife habitat plantings, grass seedings, tree planting, fish habitat structures, cultural resources recovery operations, adoption of best management practices, land use zoning, construction of drainage systems, and changes in project design or operation.

005.04E A description of any adverse impacts on the natural environment and/or cultural resources that cannot be avoided and the irreversible commitment of resources that will occur if the project is constructed, and a discussion of whether and, if so, how the benefits of the project outweigh any uncompensated adverse impacts.

005.05 State Goals for Water Resources Use. A discussion of the consistency of the project with those state goals for water resources use applicable to the project. Each goal that applies to the project should be discussed in sufficient detail to allow the Board to determine whether the project is consistent with the state goals for water resources use.

005.06 State Interest. A discussion of why the project is in the state's interest and appropriate for state assistance. Items addressed should include, but not be limited to, the contribution of the project to the state economy; infrastructure improvement; impact on state owned property; effect on population and income distribution and enhancement or protection of public resources.

005.07 Alternatives. A description and discussion of the alternative plans considered, including the alternative of taking no action, which shall include a comparison of the technical, economic, financial and environmental aspects of each alternative; their consistency with the state goals for water resources use, and their contribution to promoting the state's interest with the plan chosen and an explanation of why the preferred plan was chosen.

005.08 Required Legal Data. The sponsor shall identify all legal requirements that have been or must be met by the sponsor prior to the obligation of any funds for the proposed project. Legal data submitted by the sponsor in the feasibility report shall include the following:

005.08A A discussion of the sponsor(s) legal authority to undertake the project.

Title 265  
Chapter 2

- 005.08B A listing of any permits, licenses, or other approvals required for the proposed project, their current status, and estimated schedule for compliance.
- 005.08C An explanation of the sponsor's plan to require consultants, contractors, and sub-contractors to obtain liability insurance or bonding to ensure the proper construction of the project.
- 005.08D An analysis of the sponsor's potential liability for damages from the project, including dam failure, overflow or seepage of water and an explanation of the sponsor's plan to protect itself from any such liability.

005.09 Omitted or Incomplete Information: If an application and feasibility report submitted to the Board is not complete or if additional information, plans or specifications are required for an adequate understanding of the project, the Chairperson will so notify the sponsor. Any information requested shall be submitted as expeditiously as possible.

006 Review of and Action on Application and Feasibility Report for Assistance for Project Construction: An application and feasibility report shall be reviewed by the Board with the assistance of the staff of the Natural Resources Commission, and any other appropriate state or federal agency personnel, to determine whether the project application and feasibility report is consistent with sections 2-15,110 to 2-15,112 and 2-15,116, R.S. Supp. 1984 and amendments thereto, and these rules and regulations. The sponsor shall provide any additional information the Chairperson or the Board determines is necessary to properly evaluate an application and feasibility report. All applications and feasibility reports shall be reviewed in a non-judicial setting as required by section 2-15,116 R.S. Supp. 1984. Upon completion of its review, the Board shall determine whether the proposed project is consistent with sections 2-15,110 to 2-15,112 and section 2-15,116 R.S. Supp. 1984 and amendments thereto, and these rules and regulations. The Board's action shall address the eligibility of the proposed project for assistance.

Title 265  
Chapter 2

pursuant to the Act and these rules and regulations and, if financial assistance is approved, establish a tentative allocation of funds for the project, state whether the financial assistance shall be in the form of a grant, loan, or combination grant and loan and the dollar amount and percentage of eligible costs covered thereby. If a loan is involved, the interest rate and repayment period shall also be established. Any Board action approving a proposed project for construction assistance shall also include a statement that the Board has consulted with the Game and Parks Commission and has determined the construction of the project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of any habitat designated as critical for a threatened or endangered species. The sponsor and other interested parties shall be informed in writing of the Board's decision.

007 Tentative Allocations Exceeding Balance in Fund. The Board may approve the eligibility of projects for financial assistance and establish tentative allocations for those projects if they are otherwise eligible for financial assistance and if the approval and tentative allocations are otherwise consistent with state law, even though the tentative allocation exceeds the amount of money available in the Fund. Notwithstanding any approval, a sponsor shall not under any conditions be entitled to payments for any project costs until funds have been obligated for the payment of costs incurred by the sponsor on the project in accordance with section 2-010 of these rules and regulations. Costs paid, accrued or authorized by a sponsor prior to funds being obligated for a project and costs paid, accrued or authorized by a sponsor for portions of project development in excess of those portions for which funds have been obligated, including application and engineering costs, shall be incurred at the risk of the sponsor and the sponsor shall not be entitled to payment for those costs without Board approval. Such costs may, however, be used by the sponsor to satisfy, in whole or in part, the sponsor's share of the total costs of the project if funds for remaining project costs are later obligated for the project in accordance with section 2-010.

008 Continued Funding. In order to assure continued funding of projects with no separable components and of separable project components which are not further separable, the Board, when it first obligates funds in

Title 265  
Chapter 2

accordance with section 2-010 of these rules and regulations for a project or project component, shall obligate an amount equal to the appropriate percentage of the total cost of the project or the component even if it is not anticipated that all of such funds could be expended during the next fiscal year. Funds thus obligated shall, as soon as costs have been incurred by the sponsor subsequent to such obligation, remain obligated and be committed for the project or project component until the sponsor has received all payments to which it is entitled unless:

008.01 The sponsor has indicated a decrease in needs;

008.02 The project or a portion thereof is abandoned or significantly delayed;

008.03 The Board determines it is probable that the project or any portion of it will not be completed due to public opposition, litigation, or the loss of other state, local or federal funds needed to complete the project;

008.04 The Board fails to receive a reappropriation of unexpended funds;

008.05 The appropriation for the Water Management Fund is reduced by subsequent legislative act or;

008.06 The Board determines the project no longer meets the criteria for funding eligibility contained in the Act or these rules and regulations.

If the Board determines at any time that any of these conditions have occurred, any funds obligated for the project which have not been disbursed, or any part of them, may be deemed by the Board to be released.

009 Estimates of Fiscal Year Financial Needs. No later than July 15 of each year, each sponsor capable of utilizing either an initial or an additional obligation of funds for the following fiscal year for a project which has been determined eligible for funding should submit a report to the Chairperson indicating as follows:

Title 265  
Chapter 2

009.01 If the project has no previously identified separable components and no request is made for identification of any such components, the report shall indicate the estimated time schedule for beginning and completing the project and the amount of money requested.

009.02 If the project has separable components, the report shall indicate the component or components for which the sponsor is requesting an obligation, the estimated time schedule for commencing and completing the component or components and the amount of money requested.

009.03 If desired by the sponsor, the report may also include a request for the identification of separable components for a project with no previously identified separable components or for the separation of one or more previously identified separable components into additional separable components. Any such request shall be accompanied by an estimate of the costs and schedule for completing all separable components for which identification is requested. For those components for which an obligation of funds is desired, the information required by section 009.02 shall also be provided.

009.04 The extent of any opposition to completion of the project, or any separable component, including whether any lawsuits to prevent its completion have been instituted or are anticipated, whether any problems are being experienced or are anticipated in obtaining sufficient funds to meet the sponsor's financial obligations for the project, and any other factors which may affect the sponsor's ability to complete the project or project component.

010. Obligation of Funds for Planning or Construction Assistance. Based on the uncommitted funds available, the Board may obligate funds for financial assistance for planning or construction for projects found to be eligible. Under no circumstances may the Board obligate more funds than have been appropriated by the Legislature or which are available in the Fund from other sources. In the event that insufficient funds are available in any fiscal year to obligate funds for all projects and project components for which funds have been requested, the Board shall establish priorities among the projects and project components.

Title 265  
Chapter 2

011 Adjustments in Obligations. A sponsor may at any time during the fiscal year submit reports containing an update of the information contained in the report submitted in accordance with section 2-009. A sponsor of a project for which no report was submitted in accordance with section 2-009 may also at any time submit a report containing the information required by such section. The Board shall review all reports which have been submitted, and any other relevant information available to it and shall, if appropriate, make adjustments in the amount obligated for any project for that fiscal year. No amount previously obligated shall be decreased except in accordance with section 2-008.

012 Review and Approval of Final Plans. Prior to the actual disbursement of any funds for construction for the project or for any portion thereof, the Chairperson shall review the final plans for the proposed project or the portion for which funds are requested. If it appears during such review or during any prior or subsequent review or inspection of the project plans or construction, or during any review of project cost information that:

012.01 The plans and specifications for the project are not being followed;

012.02 The plan for development or any work performed on the project are not based on sound technical principles or practices;

012.03 The project or any portion thereof no longer meets the criteria for funding eligibility contained in the Act or these rules and regulations; or

012.04 There is or has been non-compliance with any of the terms of the contract between the sponsor and the Board;

the Chairperson shall immediately bring such variances to the sponsor's attention and may refuse to disburse any funds for the project until such time as the variances are corrected and the project is brought into conformance with all appropriate standards.

013 Limitation on Obligation and Expenditure of Funds. The amount actually obligated and expended for a project shall not exceed the dollar amount of the tentative allocation for the project approved by the Board or a dollar amount equal to the same percentage of the actual project costs as the tentative allocation represented to the estimated project costs, whichever is less. The Chairperson shall establish tentative allocations for each separable component of a project, the total of which shall equal the tentative allocation for the total project established by the Board. Funds shall be obligated by the Board on the basis of the separable components established by the Chairperson. Funds obligated for one separable component but not disbursed may be used to pay the costs of another separable component even though such payment may exceed the amount obligated for that component if necessary to achieve or maintain the appropriate ratio between eligible project costs paid by the sponsor and those paid by the Board if approved by the Chairperson.

014 Contractual Arrangements. State funds will not be provided to any sponsor pursuant to an approved loan or grant until a contract between the sponsor and the Board setting forth terms and conditions of the loan or grant has been executed.

015 Disbursements. The Chairperson shall disburse such funds from those obligated to a project as are necessary to pay, in the proper proportion, all eligible costs incurred by the sponsor in carrying out the project. All costs shall be documented by the sponsor in such manner as is directed by the Chairperson prior to the disbursement of any funds. In the event that a project has been approved for combination grant and loan allocations, each disbursement shall, unless otherwise specified by the Board, constitute a disbursement of loan and grant funds in the same proportion as the totals of the allocations approved.

016 Inspection During Construction. Board members and their authorized representatives shall have the privilege of inspecting the construction of any project at any time in order to insure that plans and specifications are being followed, and that the works are being constructed in accordance with sound engineering and technical principles and practices, but such

FILED  
REVIEWER OF REGULATIONS

MAR 27 06 02 14 36

Title 265  
Chapter 2

inspection shall never subject the State of Nebraska to any action for damages. The Chairperson shall bring to the attention of the sponsor and the project engineer any variances from the approved plans and specifications. The sponsor and the project engineer or project director shall initiate necessary corrective action.

017 Changes in Scope or Cost of Approved Projects. The sponsor shall promptly report all increases in the cost of a project, or any separable component of the project, and any proposed additions, deletions, or modifications of any separable component, or any change in the purpose or purposes of the project by submitting to the Chairperson an amendment to the application and feasibility report. Board approval of any change in the scope, purpose, or plan for development of the project, and any increase in the tentative allocation for the project, shall be required. Any proposed change in the scope, purpose, or plan of development for the project, any request for an increase in the allocation for the project, or any cost increase, regardless of whether an increase in the tentative allocation for the project is requested, shall be reviewed by the Board with the assistance of the Natural Resources Commission staff to determine whether the project still meets the criteria for funding eligibility contained in the Act or these rules and regulations.

018 Forfeiture and Repayment of Funds. Failure of a sponsor to complete, as approved by the Board, a project for which construction assistance has been provided by the Board, will result in the forfeiture of any obligated but unexpended funds. If the failure of the sponsor to complete the project is due to circumstances within the control of the sponsor, the Board may also require the repayment of all or any funds provided for the project. If, after construction has commenced, it is determined the project no longer meets the criteria for funding eligibility contained in the Act and these rules and regulations, the Board may refuse to disburse any additional funds for the project and may, if such failure is due to the fault or neglect of the sponsor or its agent, contractor, or consultant, require the repayment of all or any funds expended for the project. In addition it shall be the sponsor's responsibility to provide for the proper operation, maintenance, and replacement of all project features, components and equipment. Failure of the sponsor to carry out this responsibility shall empower the Board to require the repayment of all or any funds provided for the project.

FILED  
*Allen J. Beermann*  
Secretary of State

MAR 26 1986

APPROVED:  
Date 3-26-86

*Bob Kerrey*  
Governor

APPROVED  
ROBERT M. SPIRE  
ATTORNEY GENERAL

MAR 22 1986  
BY *Robert W. Spivey*  
Assistant Attorney General